

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

**FUNERAL CONSUMERS ALLIANCE, INC.,
et al.,**

Plaintiff,

Case No. 06-MC-14

-vs-

**SERVICE CORPORATION INTERNATIONAL,
et al.,**

Defendant.

DECISION AND ORDER

The above-captioned parties are engaged in class action litigation in another district. *See In re Funeral Consumers Antitrust Litigation*, Case No. 05-CV-03394 (KMH) (S.D. Tex, Houston Division). The plaintiffs brought this action to enforce a *subpoena duces tecum* against a non-party, the National Funeral Directors Association (“NFDA”), headquartered in Brookfield, Wisconsin. The subpoena issued from this Court on August 30, 2005. The NFDA produced some documents, but plaintiffs are convinced that relevant documents are being withheld. Plaintiffs attempted to resolve the matter informally on January 9, 2006, imposing a response deadline of January 17, but a response was not forthcoming.

The Court finds that the documents requested are discoverable under the liberal standard set forth in the federal rules. *See Fed. R. Civ. P. 26(b)(1)*. Furthermore, NFDA did not respond to the motion to compel and failed to serve any written objections to the subpoena, which results in a waiver of any objections, including privilege. *See, e.g., Angell v. Shawmut Bank Connecticut National Association*, 153 F.R.D. 585, 590 (M.D.N.C. 1994) (Under Rule

45(c)(2)(B), "failure to timely file an objection will result in waiver of the right to object to enforcement of the subpoena"). Therefore, plaintiffs' motion to compel will be granted.

NOW, THEREFORE, BASED ON THE FOREGOING, IT IS HEREBY ORDERED THAT

1. Plaintiffs' motion to compel [Docket No. 1] is **GRANTED**, such that NFDA is compelled to produce all documents responsive to the plaintiffs' August 30, 2005 subpoena; and
2. This matter is **DISMISSED**.

Dated at Milwaukee, Wisconsin, this 1st day of November, 2006.

SO ORDERED,

s/ Rudolph T. Randa
HON. RUDOLPH T. RANDA
Chief Judge